

REMARKS

Formal Matters

Claims 128-137 and 145-149 are pending after entry of the amendments set forth herein.

Claims 104-127 and 138-144 have been canceled above, without prejudice to the possibility of filing one or more continuing applications directed to the subject matter recited therein.

128-137 and 145-147 were examined. Claims 128-130 and 132-134 were rejected. Claims 131 and 135-137 were objected to. Claims 145-147 were allowed.

Applicants respectfully request reconsideration of the application in view of the amendments and remarks made herein.

No new matter has been added.

The Office Action

Claims Rejected Under 35 U.S.C. Section 102(b) (Vierra et al.)

In the Official Action of April 23, 2007, claims 128-129 and 132-133 were rejected under 35 U.S.C. Section 102(b) as being anticipated by Vierra et al., U.S. Patent No. 5,807,243. The Examiner asserted that Vierra et al. shows a device comprising a single, substantially rigid tissue contact member 100 and a connecting member 3. The Examiner referred to column 9, lines 27-29 as support for the single, substantially rigid tissue contact member 100. Referring to that portion of the disclosure of Vierra et al., Applicants note that Vierra et al. discloses that, alternative to providing the annular ring made of flexible rubber, the foot may include a hinge, so that a portion of the annular ring 100 can be folded around the hinge to decrease the cross-sectional profile of the annular ring 100. In this configuration, the foot could be made of more rigid materials, such as stainless steel or tungsten carbide.

Applicants respectfully submit that although Vierra et al. discloses that the contact member 100 can be made of a rigid material, Vierra et al. does not disclose a single, rigid contact member, since, when made of a rigid material, the contact member of Vierra et al. is provided with a hinge so that the contact member can be folded about the hinge to make it more compact. Such a configuration is accordingly not rigid, but foldable. To still further clarify this distinction, Applicants have amended

claim 128 above to further recite that the tissue contact member is formed in a unitary, continuous loops and is a single, substantially rigid, contact member. It is respectfully submitted that the embodiment of Vierra et al. referred to by the Examiner is not unitary, as it includes at least two components joined by a hinge.

In view of the above amendment and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 128-129 and 132-133 under 35 U.S.C. Section 102(b) as being anticipated by Vierra et al., U.S. Patent No. 5,807,243, as being inappropriate.

Claims Rejected Under 35 U.S.C. Section 103(a) (Borst et al.)

Claims 128-129 and 132-134 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Borst et al., U.S. Patent No. 5,836,311. The Examiner asserted that Borst et al. shows a device having tissue contact member 81 and connecting member 80. The Examiner admitted that the contact member 81 in Fig. 13 is not a continuous loop, but a partially closed (open) loop. The Examiner asserted that it would have been obvious, as a matter of design choice, to close the contact member 81 of the Fig. 13 embodiment of Borst et al. to form it as a continuous loop, since Applicants have not disclosed that such solves any state problem.

Applicants respectfully traverse. Referring to column 7, lines 44-47 of Borst et al., Borst et al. discloses that if a mammary artery has been grafted end-to-side to a coronary artery, then the opening 83 permits the suction head 81 to be removed from around the grafted artery. Accordingly, Applicants submit that it would not have been obvious to modify the suction head 81 of Borst et al. to form it as a closed loop as “a matter of design choice”, since this would destroy a function of the suction head as disclosed by Borst et al., particularly, the ability to remove the suction head after grafting a mammary artery end-to-side to a coronary artery.

Accordingly, in view of the above remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 128-129 and 132-134 under 35 U.S.C. Section 103(a) as being unpatentable over Borst et al., U.S. Patent No. 5,836,311, as being inappropriate.

Claims Rejected Under 35 U.S.C. Section 103(a) (Vierra et al.)

Claim 130 was rejected under 35 U.S.C. Section 103(a) as being unpatentable over Vierra et al., U.S. Patent No. 5,807,243. The Examiner asserted that it would have been an obvious matter of design

choice to form the base member of Vierra et al. with an oval shape. Applicants respectfully submit that claim 130 is allowable for at least the same reasons provided above with regard to claims 128 and 129, since claim 130 depends therefrom, and Vierra et al. fails to meet all of the recitations of claim 128 for the reasons described above.

Accordingly, in view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 130 under 35 U.S.C. Section 103(a) as being unpatentable over Vierra et al., U.S. Patent No. 5,807,243, as being inappropriate.

New Claims 148 and 149

New claim 148 has been submitted above, and is similar to claim 128, prior to the above amendment of claim 128, while additionally reciting that the connecting member is integrally formed with the at least one tissue contact member. Support for this language can be found at page 41, lines 4-5 of the specification, for example. It is respectfully submitted that none of the prior art of record anticipates, discloses teaches, suggests or renders obvious the recitations of claim 148 as provided above.

New claim 149 has been submitted above to combine the recitations of claims 128-131, prior to the amendment of claim 128 above. It is respectfully submitted that claim 149 is allowable, in accordance with the Examiner's prior indication of such.

Allowed Claims

Applicants wish to extend their appreciation to the Examiner for the indicated allowance of claims 145-147.

Conclusion

Applicants submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-2653, order number GUID-021DIV.

Respectfully submitted,
LAW OFFICE OF ALAN W. CANNON

Date: _____

6/13/07

By: _____



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